



Atty. Dkt. No. 040302-0383

JKW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Keisuke WAKABAYASHI

Title: FUEL CELL SYSTEM

Appl. No.: 10/780,767

Filing Date: 2/19/2004

Patent No: 7,442,454

Grant Date: 10/28/2008

REQUEST FOR RECONSIDERATION OF DISMISSAL

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a request for reconsideration of the dismissal dated August 3, 2009 (hereinafter "Dismissal"). A fee was submitted with the original request for reconsideration of Patent Term Adjustment (PTA) of November 17, 2008. If a request for reconsideration is not appropriate, then this present request is a petition under 37 C.F.R. sections 1.181, 1.182, and 1.183.

In the Dismissal, the PTO refuses to follow a decision of the United States District Court for the District of Columbia with regard to Patent Term Adjustment (PTA).

U.S. Patent Law, specifically 35 U.S.C. 154(b)(4)(A), provides:

"An applicant dissatisfied with a determination made by the Director under paragraph (3) shall have remedy by a civil action against the Director filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent. Chapter 7 of title 5, United States Code, shall apply to such action. Any final judgment resulting in a change to the period of adjustment of

the patent term shall be served on the Director, and the Director shall thereafter alter the term of the patent to reflect such change."

Given that the above-quoted law expressly gives the United States District Court for the District of Columbia jurisdiction and authority over the PTO with regard to PTA, the PTO is not at liberty to not follow this District Court. Reconsideration of the Dismissal is respectfully requested on this basis.

In the interest of judicial and administrative economy and efficiency, it is respectfully requested that a decision on this present request for reconsideration be deferred or delayed until a final decision has been rendered in Wyeth v. Dudas, which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120.

No additional fees are believed to be required. However, if any additional fees are required, the Commissioner is authorized to make appropriate charges to Deposit Account No. 19-0741 to provide exact payment.

Respectfully submitted,

Date October 2, 2009 By  39,370

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